



Michael J. Mooney
General Counsel,
Regulatory Policy
TEL: (720) 888-2538
FAX: (720) 888-5619
Michael.Mooney@Level3.com

August 19, 2013

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM 10593; *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

On August 15, I met with Commissioner Ajit Pai. We discussed that, speaking broadly, Level 3 favors a “light touch” regulatory approach, but that there are sectors of the communications industry where competition is inadequate or nonexistent, and in those areas, government regulation must play a role.

Special access is one of those areas. The price cap LECs continue to have dominant market positions for a wide range of special access services, and reasonable policy needs to do a couple of things: 1) keep monopolists from using their monopoly power to unreasonably deter competition, and 2) for services and areas where there is no competition, provide reasonable regulation to keep monopolists from exploiting their market position and charging monopoly prices. Concerning the former, the Commission should limit the price cap LECs’ use of demand lock-up arrangements that tie purchases for products subject to competition to purchases for non-competitive products and trade commitments of high percentages (90% or more in many cases) of existing spend for price discounts or other commercial terms. These anticompetitive practices limit buyer choice, limit the available market for sellers, deter construction of new competitive

facilities and generally obstruct the development of a competitive marketplace. Concerning the latter, reasonable pricing regulation for non-competitive services is appropriate. The effects of the incumbents' monopolistic pricing and anticompetitive conduct are felt not just by competitive carriers like Level 3, but by small and large businesses of all kinds and by consumers across the Nation.


We discussed the IP transition and IP interconnection for the exchange of voice traffic. Level 3 has repeatedly urged the Commission to clarify that sections 251 and 252 of the Telecommunications Act of 1996 apply to requests for IP interconnection for the exchange of voice. The plain language of the statute compels that result, and the most straightforward and most effective thing the Commission could do to facilitate IP interconnection would be to say so promptly. While many incumbents profess a willingness to engage in commercial negotiations for IP Interconnection for voice, the truth is that they hold unequal bargaining power in the discussions. Nothing about sections 251 and 252 restricts the free negotiations for fair terms incumbents claim to desire. Those provisions simply provide a regulatory backstop if the negotiations prove fruitless, and a clear timeframe for the conclusion of actual agreements.

We discussed IP peering. Here last mile ISPs have a monopoly over their end users—there is simply no option to get content to an ISP's customers other than through the ISP. Those last mile ISPs should not be allowed to unreasonably discriminate against third-party content in favor of their own or their affiliate's content. Nor should they be permitted to unilaterally charge arbitrary access fees before they will allow the content their end users have requested to flow to them. Both practices are bad for consumers and worse for the evolution of the free and open Internet. Rather, networks should (and can) be engineered to equitably share backbone network cost burdens, and where those burdens are shared in approximate equal measure, arrangements should be settlement free.

We discussed Level 3's concern that wireless spectrum is being consolidated into the hands of a few players, and that wireless networks may begin demanding arbitrary access fees like some ISPs have. In cases such as this and IP peering where there are effective last mile bottlenecks to consumers, the implementation of fair, reasonable, and non-discriminatory interconnection rights (which have long been a core tenet of communications interconnection policy) may be appropriate. We also discussed that putting unlicensed spectrum into the hands of innovators is something Level 3 supports, because it is good for consumers and Internet innovation.

Finally, we discussed Level 3's request, which has been pending for going on a year now, that the Commission issue a declaratory ruling clarifying that CLECs are permitted to collect end office switching access charges for over-the-top (OTT) VoIP calls when providing the functional equivalent of end office switching provided by the incumbents. As part of its *USF/ICC Transformation Order*, in order to resolve industry disputes and encourage deployment of

modern IP-based communications technologies, the Commission expressly permitted LECs to assess access charges for toll VoIP for functions performed either by the LEC or its VoIP partner.¹ The point of the Commission's "VoIP Symmetry Rule" was symmetry, not the asymmetry AT&T has insisted is the case in OTT situations. When a CLEC and its over-the-top VoIP partner perform all the functions performed by a TDM end office switch, they are entitled to charge a local switching access charge just like AT&T does--and just like the when the CLEC and its *facilities-based* VoIP partner perform those identical functions (which AT&T concedes is appropriate). The Commission should clarify this promptly, rather than leaving the interpretation of the Commission's rules to district courts across the country to resolve, which would likely lead to inconsistent results and which would impose significant costs on the industry.

Sincerely,

Michael J. Mooney

Cc: Commissioner Ajit Pai
Nicholas Degani

¹ 47 C.F.R. § 51.913(b)